IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1690 OF 2007

Niranjana Hasmukhlal Shah & Ors. ..Petitioners.

V/s.

Union of India & Ors. ..Respondents.

Mr.Arun Mehta i/b. Akshar Laws for petitioners.

Mrs.S.V.Bharucha for respondents.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2007.

P.C. :-

Rule. Heard forthwith.

2. Petitioners are the legal heirs of the original appellant who had preferred appeal No.179 of 2001. The order of 13/8/2001 of the Appellate Tribunal is as under:-

> " After hearing both the parties, the delay in filing the appeal is condoned and the dispensation application is allowed on the ground of prima facie case of consideration in favour of appellant. "

3. Thereafter, the matter came up again on 12th July, 2005. It was noted that in Appeal No.179 of 2001 the legal heirs have made an application asking for representation after the death of the appellant. It is noted as under:-

> " The application for dispensation of pre-deposit of penalty is allowed and full dispensation is granted by order dated 13/8/2001. "

4. The petitioners have come up against the order dated 22nd March, 2007 wherein the appellants in Appeal No.179 of 2001 have been directed to deposit 20% of the penalty.

5. The case of the petitioners is that once the order of dispensation was allowed, there was no question of the appellate Tribunal recalling its order and directing the petitioners herein to make a deposit of 20%.

6. We agree with the learned counsel for the petitioners. Once the power is exercised, there was no question thereafter for the petitioners herein to deposit 20%. That order is without jurisdiction and consequently, the directions as contained in the order dated 22nd March, 2002 directing the petitioners to make predeposit of 20% is set aside. The Tribunal is directed to hear the appeal afresh on merits in accordance with law.

7. Rule is made absolute in above terms with no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELL0, J.)**